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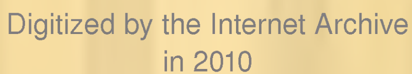
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SUBSTANCE

OF THE

SPEECH OF JOHN QUINCY ADAMS,

TOGETHER WITH A PART OF THE DEBATE IN THE

HOUSE OF REPRESENTATIVES

OF THE

UNITED STATES,

UPON THE

BILL TO ENSURE THE MORE FAITHFUL EXECUTION OF THE LAWS

RELATING TO THE

COLLECTION OF DUTIES ON IMPORTS.

BOSTON:
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1840.

SPEECH OF MR. ADAMS.

HOUSE OF REPRESENTATIVES, MAY 8, 1840.

The House being in Committee of the Whole on the state of the Union, (Mr. BELL, of Tennessee, in the chair,) the subject under consideration being a bill to ensure the more faithful execution of the laws relating to the collection of duties on imports; and the immediate question before the committee being a motion of Mr. RHETT, of South Carolina, to strike out the enacting clause of the bill—

Mr. ADAMS rose in opposition to that motion, and addressed the committee nearly as follows:

The motion of the gentleman from South Carolina is to strike out the enacting clause of this bill, but, as far as I understood the gentleman, that is not the object he seeks to obtain, nor does its propriety or necessity at all follow from the objections which the gentleman has urged against certain features of the bill. To strike out the enacting clause is the parliamentary mode of annihilating the bill. Now, as I understood him, the gentleman is not unwilling that a bill shall pass for the object proposed, though he has several objections to this bill. The gentleman declared himself willing to assist the collector of New York (on whom he passed a eulogium) in the more effectual discharge of his duty, and he at first moved to recommit the bill, with the avowed purpose that such amendments might be made in it as should meet and remove his objections. He was informed by the Chair that that motion was not in order; that the bill had been read through, and the Clerk was proceeding to read the first section, when the gentleman said he objected to the whole bill, and thereupon moved to strike out the enacting clause.

It does not appear to me that this committee will think that his motion was warranted by the objections he had stated, or will agree that the bill shall be nullified at once. Without replying to him, therefore, I might directly call upon the committee to decide that question, because, if it shall be decided in the affirmative, it will be useless to proceed further in discussing the details of the bill. Under these circumstances, I feel somewhat embarrassed. The objections of the gentleman going to certain parts of the bill, but not to the whole, I do not know whether it will be in order for me to reply to them till the question on this motion shall be decided. On the whole, I think it best, and I accordingly propose that the question on striking out the enacting clause be for the present postponed; that we now proceed to consider the bill by sections. I will endeavor to explain each section in order, and when we arrive at those to which the objections of the gentleman more particularly apply, I hope to be able to satisfy this

committee that there exists no objection of sufficient force to warrant us in striking out any one of the sections, much less to destroy the whole bill.

There are, however, one or two objections brought forward by the gentleman which go to the bill itself, and which it may, therefore, be proper that I should now answer, as far as I am able.

The first of them was, that this bill has been reported to the House by the Committee on Manufactures, the gentleman being of opinion that it should have come from the Committee of Ways and Means, or from the Committee on Commerce. I believe it would have been in order if reported by either, certainly if by the Committee of Ways and Means; for it will be recollected that, when the first of the memorials on which the bill is founded was presented in the House, it was proposed and urged by myself to refer it to the Committee of Ways and Means, but the House decided not to do this, but to refer it to the Committee on Manufactures. The evil complained of exists in the execution of the laws of the United States, and is therefore, in the first place, an evil directed against the revenue. It is a fraud committed by foreign traders, the effect of which is to defeat the collection of the revenue. The evil, therefore, falls first on the Government, and, touching the revenue, it would have been an appropriate subject for the consideration of the Committee of Ways and Means. But these frauds affect, in the second place, the manufacturing interests of the country, which are injured in the same manner as the revenue; the principal difficulty takes place in that branch of the revenue derived from the importation of woollens, which goods, for several years past, have amounted in value, according to the invoices at the custom-houses, to not less than ten millions of dollars annually. Now, I shall endeavor to show that, in fact, these ten millions of dollars constitute but two-thirds of the real value of the woollens imported, which is not less than fifteen millions, and that by these frauds the duties on the balance of five millions are actually lost to the revenue. At the time of the compromise, the average duty on these goods was fifty per cent. on the value; but, in consequence of the reductions which have since been made in the rates of duty, the average is now forty-one per cent. on the value. This, on five millions, amounts to over two millions of dollars. That is the loss which the revenue of the country sustains by means of these frauds in the port of New York alone.

By this deduction of one-third of the amount of duties, the manufacturers of our own country are rendered unable to sustain the competition. They state in their memorial:

"That they have for many years past been engaged in the manufacture of wool, having entered upon the business under the belief that it would be safe and permanent, inasmuch as it would necessarily become an extensive and useful branch of industry in this country; and relying upon the faithful execution of the tariff laws. But while these laws have been carried into full effect with regard to the importation of the raw materials, thereby keeping up the prices of wool in particular, very much above the prices paid by foreign manufacturers, manufactured goods have been coming to this country in large quantities, invoiced at much less than their cost or value, thereby evading the laws, and placing the American manufacturer upon worse ground than if no tariff existed. This has been done almost if not entirely by foreigners, who have been thereby enabled to undersell the honest American importer, and this has increased within a few years to such an extent as to drive from the importation of woollens nearly all the American importers, and it is now estimated that seven-eighths of all the woollens imported come into the country on foreign account. But your memorialists will leave the American importers to speak for themselves, and respectfully represent that these frauds on the revenue, and consequent extreme low prices of woollens, have ruined many, and forced all to stop their mills either wholly or in part, until at the present time less than one-half of the woollen machinery in the country is in operation, causing much distress among the operatives as well as many of the owners."

Thus it appears that the fraudulent practices complained of have driven

the American manufacturers out of the market, and the American importing merchants out of their business.

Another part of the memorial shows the reason why this bill has been reported by the Committee on Manufactures, rather than by the Committee of Ways and Means:

"Your memorialists are aware that the attention of the collectors, and in particular the vigilant collector at New York, has been called to this evil, and efforts are making to stop it; but they believe that further action by Congress is necessary to guard against the evasion of the laws. Recent experience has shown the great defects of existing laws, particularly in regard to goods which have passed through the custom-house and been taken from the original packages, although by means of fraud and perjury they may have paid but a small part, if any, of the duty fixed by law.

"Your memorialists therefore ask that the laws for the collection of duties may be revised, and made effectual in preventing frauds of every kind."

I have fifty other memorials from American manufacturers, containing similar complaints. It was the pleasure of the House to refer them to the Committee on Manufactures, and it consequently became the duty of that Committee to report to this House a bill providing a remedy for so great an evil.

But the committee did not proceed on the statements of the manufacturers alone. Knowing that the interest of the government and that of the manufacturers was, in this matter, identical, the first thing they did was to consult the Secretary of the Treasury as to the facts, and through him to hold communication with the collector at New York, and from the replies of both these public officers they received a full confirmation of the statements made in the memorials. There had in fact been much correspondence on this matter between the Secretary and the collector, previous to the meeting of Congress; all which I have here, but will not detain the committee by reading.

In addition to this, the committee had personally before them two officers of the customs from New York, who gave to the committee a narrative of the mode in which these frauds had been accomplished. Indeed, the substratum of the bill was drawn up by the collector of New York and submitted to the district attorney there—the former attorney general of the United States. It has been drawn with a view to meet this nation of swindlers from abroad. I call them a nation, for this practice is a sort of national thing. In saying this it is not my intention injuriously to reflect on the British nation, for ever since our Declaration of Independence a part of my creed has been expressed in the language of that instrument, for I hold the British nation "enemies in war, in peace friends," and my feelings are now altogether friendly towards them; but when a portion of that nation come over to this country to cheat us out of our revenue, and to defraud our own manufacturing interest, it is my duty to defend my country against that injury.

I have said that there is something national in this matter, and I will now proceed to state what, in my judgment, lies at the bottom of this proceeding. It is a maxim of British commercial law that it is lawful for the citizens of one nation to defraud the revenues of other nations. The author of the maxim was a man famous throughout the civilized world—a man of transcendent talents, who fixed more, perhaps, than any other man of the same century, his impress on the age in which he lived, and upon the laws of England—I mean Lord Mansfield. In some respects it has been greatly to the advantage of those laws, but, in others, as much to their disadvantage and discredit; of which the maxim of which I now speak is a signal instance. He was the first British judge who established the principle that it is a lawful thing for Englishmen to cheat the revenue laws of other nations, especially those of Spain and Portugal. This principle was

first settled in an act of Parliament, the object of which was to suppress what are denominated wager policies of insurance—a species of instrument well known to lawyers as gambling policies, being entered into when the party insuring has no interest in the property insured. It had been a question whether such policies were lawful by the common law. The practice had greatly increased, insomuch that wager policies had become a common thing. It was with a view to suppress these that the statute of the nineteenth of George the Second, chapter 37th, was passed. The object of that statute was good; it was remedial in its character; it went to suppress a public evil; but while it prohibited wager policies in all other cases, it contained an express exception in favor of those made on vessels trading to Spain and Portugal. It is entitled "An Act to regulate insurance of ships belonging to the subjects of Great Britain, and on merchandises or effects laden thereon." And its preamble is as follows:

"Whereas it hath been found by experience that the making assurances, interest or no interest, or without further proof of interest than the policy, hath been productive of many pernicious practices, whereby great numbers of ships, with their cargoes, have either been fraudulently lost and destroyed, or taken by the enemy in time of war; and such assurances have encouraged the exportation of wool and the carrying on many other prohibited and clandestine trades, which, by means of such assurances, have been concealed, and the parties concerned secured from loss, as well to the diminution of the public revenue, as to the great detriment of fair traders; and by introducing a mischievous kind of gaming or wagering under the pretence of assuring the risk on shipping and fair trade, the institution and laudable design of making assurances hath been perverted; and that which was intended for the encouragement of trade and navigation has, in many instances, become hurtful of and destructive to the same."

"For remedy whereof, be it enacted, &c. That from and after the 1st day of August, 1746, no assurance shall be made . . . on ships or goods . . . interest or no interest, or without further proof of interest than the policy, or by way of gaming or wagering, or without benefit of salvage to the assurer; and that every such assurance shall be null and void to all intents and purposes."

Observe that the class of policies declared null and void by this act are not only those denominated gaming or wager policies, in which the assured had *no interest* in the thing insured, but those in which he had an interest of unlawful trade. So that, in the event of loss by seizure or confiscation, the assured might recover from the insurer, without being required to *prove* his interest in the thing insured. They were, therefore, policies for the protection of prohibited and clandestine trade, or, in other words, of smuggling.

To suppress such policies of insurance is the declared purpose of the act, and a worthy and laudable purpose it is. And yet the third section of this same act reads thus:

"Provided, also, and it is hereby enacted, That any merchandises or effects from any ports or places in Europe or America, in the possession of the Crowns of Spain or Portugal, may be assured in such way and manner as if this act had not been made."

And why this exception of policies upon merchandises or places in Europe or America in the possession of the Crowns of Spain or Portugal?

Now, I say that the principle of this exception lies at the foundation of the whole system of revenue frauds in the port of New York. I invite the attention of the committee to the words of Blackstone on this subject. After stating the nature and dwelling on the immorality of these wagering and smuggling policies, he says:

"But as a practice had obtained of insuring large sums without having any property on board, which were called insurances, interest or no interest, and also of insuring the same goods several times over, both of which were a species of gaming, without any advantage to commerce, and were denominated wagering

policies, it is therefore enacted by the statute of 19 Geo. 2, c. 37, that all insurances, interest or no interest, or without further proof of interest than the policy itself, or by way of gaming or wagering, or without benefit of salvage to the insurer, (all which had the same pernicious tendency,) shall be totally null and void, except upon privateers, or ships in the Spanish and Portuguese trade, *for reasons sufficiently obvious.*"—2 *Blackstone, ch.* 30, *p.* 4, § 1.

It is an old maxim of the schools that frauds are always concealed under generalities. What were these *obvious reasons?* Why were they concealed? It is known to the committee that in the celebrated controversy of the man in the mask—I mean Junius with Blackstone—he said that for the defence of law, of justice, and of truth, let any man consult the work of that great judge—his Commentaries upon the laws of England—but that if a man wanted to cheat his neighbor out of his estate, he should consult the doctor himself. I go a little further than Junius, although I do it with great reluctance, for I hold the book to be one of the best books in the world. I say that the observation of Junius applies to the book as much as to the judge, when, from reasons like those with which scoundrels cover their consciences, that book evades telling why the exception was made in regard to Spain and Portugal, and what those reasons were which the Judge declares to be "*sufficiently obvious.*" This exception of the British law was *infectious;* it spread into France, whose Government adopted the same provision by way of *reprisal.* I have here the work of Emerigon, the principal authority of French lawyers on insurance, and I will read a short extract of which I have made a translation. Emerigon gives the report of a case, and, after stating the general principles of insurance, he says:

"Let us now come to the principal question. Is it lawful to cause insurance to be made of merchandise, the importation or exportation of which is prohibited in a friendly country?

"From the principles above established, it seems that such an insurance ought to be declared void, although the underwriters should have known the intention to smuggle. Yet the usage is otherwise."

He then refers to the English statute of 19 Geo. 2, ch. 37, cited by Blackstone, and, quoting his remark that the reasons for the exception of ships trading with Spain and Portugal are *sufficiently obvious*, adds:

"That is to say, that the English smugglers in the dominions of Spain and Portugal cannot produce invoices to prove their property. The same usage is tolerated by us."

He next produces reports of two cases, one of 23d June, 1745, and the other decided in the Court of Admiralty at Marseilles, 31st July, 1758, in which the insurers of goods in such a smuggling trade recovered from the underwriters.

Emerigon communicated his argument on these cases to Valin, the author of the Commentary on the Marine Ordinance of Louis XIV, well known as the great commercial law book of France.

"I distinguished," says Emerigon, "between smuggling in France and that of Frenchmen in foreign countries. No merchandise, the importation or exportation of which is prohibited in France, can be insured, and the underwriters cannot be held for confiscation pronounced by the King's authority, because the insurance is null and void. But it is not so with merchandise smuggled against the laws of foreign nations.

"This distinction made by me was adopted by the sentence of the Parliament of Aix, rendered June 30, 1759, which confirmed the decision at Marseilles."

M. Pothier, who writes not as a mere lawyer, but as a moralist and a philosopher, protests against this doctrine, and appeals to the eternal laws of morality. After citing both the passages I have quoted—

"It is false," says Pothier, vol. iii. p. 22, § 56, "that a Frenchman may justly carry on a smuggling trade in a foreign country, forbidden by its laws. They who trade in a country are, by the laws of nature and of nations, bound to conform, so far as regards that trade, to the laws of the country where they carry it on. Every sovereign has empire and jurisdiction over all that is done within the country where he has the right to command. He has consequently the right to enact laws relating to commerce within his territories, binding upon all who trade therein, as well upon strangers as upon his own subjects. The right of a sovereign to retain within his dominions certain merchandise existing there, is incontestable; and if he forbids the exportation of them, to export them against his prohibition is to violate his right to retain them, and consequently is an injustice. Besides, even if a Frenchman were exempt, which he is not, from the laws of Spain, with regard to commerce in Spain, it cannot be denied that the Spaniards, whom he is obliged to employ, are subject to those laws, and grievously trespass, by combining with him to effect the exportation forbidden by the said laws. Now, inasmuch as he cannot accomplish this smuggling trade in Spain, without seducing Spaniards to sin, he sins himself, for whoever tempts another to sin sins himself. This commerce is therefore illicit, and contrary to good faith, and consequently the contract of insurance intervening to favor and protect such trade by holding the underwriter responsible for the risks of confiscation to which it is exposed, is equally unlawful, and consequently can raise no binding obligation."

There is one part of this passage which is peculiarly gratifying to me, because I feel confident it will have an influence on the gentleman from South Carolina, for it lays down the genuine doctrine of State rights.

This is an honest and an honorable man—he founds himself not on the decision of courts, but on the eternal laws of justice. Emerigon replies to this, and says:

"Far be it from me to disapprove the doctrine of this respectable author. But perhaps he would have been less rigid if he had considered that smuggling is a vice common to all commercial nations. The Spaniards and English practise it with us in time of peace. We are therefore warranted, by a sort of reprisal, to practise it with them."—*Emerigon*, 2, 212.

And now, to show to this committee what those reasons "sufficiently obvious" referred to by Blackstone really are, I will turn them to the work of William David Evans, the English translator of Pothier; and, in his commentary on him, his language shows what is the moral sense of an upright Englishman on this practice:

"An intention to defraud the public revenue is a frequent cause of vitiating contracts; but the law of one country does not interpose to protect the revenue of another; and therefore an engagement, valid in other respects, is not defeated by any contrivance to evade the revenue laws or special commercial regulations of a foreign country. (b)"

"(b) *Pothier*, in his treatise on insurance, makes some observations in opposition to this principle, which are apparently very judicious. Having cited a judgment from Valin, in which it was held that it was not forbidden to a Frenchman to carry on in a foreign country a commerce prohibited by the law of such country, and that, therefore, the risk of confiscation might be insured like all other perils of the sea, he observes that this principle appears false; for that those who carry on commerce in any country are obliged by the laws of nations, and also by the law of nature, to conform, in respect to such commerce, to the laws of the country where they carry it on. Every sovereign has empire and jurisdiction over whatever is done in the country where he has a right to command, and, consequently, he has a right to make laws respecting the commerce that takes place in his country, which shall be obligatory upon foreigners as well as upon his own subjects. It cannot be disputed that a sovereign has a right to retain in his territories certain merchandises which are there, and to prohibit their exportation. To export them, then, without his orders, is to infringe his right of retaining them, and is, consequently, an injustice."—*Evans's Translation of Pothier's Appendix*, 2. 4.

But the imputation of discreditable motives for this exception in the act of Parliament shall not rest upon the arguments or inference of foreign

moralists or lawyers. I will prove them from the recorded action of the Court of King's Bench itself, and trace them by direct testimony to the person of Lord Mansfield.

In the second volume of the Term Reports, page 164, the following are the words of the celebrated Judge Buller:

"And, indeed, other parts of the Act (19 Geo. 2, c. 37) show that the Legislature turned their attention to different cases which might arise in the course of trade; for they afterwards speak of insurances upon goods coming from any of the Spanish or Portuguese dominions, which may be effected, 'interest or no interest.' That exception was added for the purpose of encouraging the trade with Spain and Portugal, which was in favor of this country; and I have heard Lord Mansfield say that the reason of that allowance was to favor the smuggling of bullion from those countries, which was prohibited to be exported from thence; and the persons to whom it might be consigned here, could not tell by what vessels or at what time it might be sent, as their correspondents abroad were obliged to watch the opportunity of exporting it."—*Buller, J. Term Reports*, 2, 164.

This is the sum of the whole matter. Judge Butler heard Lord Mansfield say that the object of the exception in regard to Spain and Portugal was to encourage—yes, to *encourage* the smuggling trade. The object was, that smugglers should not only escape the effect of their villany, but should be actually encouraged by Government in its perpetration.

I think I have now established the position which I assumed, that the lawfulness of violating the revenue laws of other nations is a principle of English law—a principle sanctioned by the Legislature and the judicial courts of Great Britain, but one which the best elementary writers, proceeding on the great and eternal principles of morality, have condemned as a false principle; and I have thought it necessary to do this with a view to trace these frauds upon our revenue, committed by British subjects, to what I believe to be their original source, in the false morality in the English Parliament and English judges. What is the natural effect of the promulgation of such principles by such authority? What can it be but to encourage frauds on the revenue of other nations? When a principle like this goes out sanctioned with the legislative authority, it will have its effect on the nation. "*Quid leges sine moribus.*" The whole moral principle of a nation is contaminated by this legislative authorization and judicial sanction of a practice dishonest in itself, which necessarily includes not merely a permission, but a stimulant to perjury. If an English merchant subscribing to this principle goes to establish himself in a foreign country, he goes as an enemy warranted, by the sanction of his own courts and Parliament, to do any thing that can defraud its revenue. Perhaps this may be one of the causes of the vulgar saying which all must have heard, but which, thank God, I still hope is not warranted by the practice of the native merchants of our country, that custom-house oaths have no validity. There is a feeling but too prevalent, which distinguishes between custom-house oaths and other oaths. It is obvious that smuggling cannot be carried on to any extent without the commission of perjury; there must be false swearing; and it is that false swearing which the British laws have sanctioned. None of this bullion of which Justice Buller speaks could be smuggled out of Spain and Portugal without false oaths, and you will find, from the details of a case which I shall presently call to your attention, that false swearing is at the bottom of the frauds which this bill seeks to correct—frauds in consequence of which seven eighths of all the woollens imported into New York escaped the payment of the duty charged by law. These people do not hold themselves bound to respect our revenue laws, and they proceed without scruples to the perpetration of perjury in order to carry on with success the evasion of them.

There are various modes by which this purpose is effected. One of these modes, as we learned from the Collector of New York, is a profound

study of the phraseology of our law, with the purpose of finding therein any equivocal expression which may be taken advantage of to defeat the end of the law. And as the tariff law of 1832 has now been eight years in operation, they have had all that time to prosecute this study, and to discover every possible mode by which the law may be evaded.

Another mode was to prepare double invoices in England when the goods were shipped—one for the consignee, the other for the custom-house—the first exhibiting the real value of the goods, the latter about two thirds of that value. The duty was thus reduced in 1832 sixteen or seventeen per cent.; the reduction at present averages from thirteen to fourteen per cent. the duty having been lowered by the compromise act. It is obvious that an escape from one third of the duty enables them successfully to compete with our own manufacturers, and drive them out of the market.

Another mode was direct corruption and bribery. This is proved to have been practised during a portion of a period when Mr. Swartwout was collector.

Now it appears that all these modes of evading the revenue had gone on for years undetected, until a case happened which I shall now produce to the committee. One of those English manufacturers commonly known as Yorkshire clothiers, sent out his son to this country as his agent and consignee, who entered his goods for a series of years at our custom-house on the exhibition of invoices falsified to the amount of one third of the value. It happened, however, that, in spite of all this successful roguery, the father in England became a bankrupt, in consequence of which his account books and correspondence were put into the hands of his assignees to be examined, when all his frauds came to light. Those assignees sent these books over to this country, and they came into the hands of the collector at New York. Then the genuine invoices were compared with those which for a series of years back had been exhibited by his son, and sworn to. The son, however, does not appear to have been publicly prosecuted for perjury, but to have been sued for that balance of duty which he ought to have paid, and did not. On the 12th of June, in 1839, the cause went to a jury, who brought in a sealed verdict finding a balance of twelve thousand two hundred and seventy-eight dollars and seventy-six cents for the United States. The District Attorney has given a printed account of the trial; it is one of the most curious cases which has occurred of late years, and goes forcibly to illustrate the position I have taken in relation to the English law, as fixing in the minds of British subjects a false code of morality as respects defrauding foreign nations of their revenue:

"The defendant had imported a large amount of woollens between the 11th February, 1834, and the 7th September, 1837, on which he had paid duties to the amount of $35,689 15, being 50 per cent. *ad valorem* (with the reduction required by the compromise act) on the amount of the invoices by which he had entered 208 packages of cloths and cassimeres.

"B. F. Butler, Esq., district attorney, opened the case on the part of the United States. He called the attention of the jury to the fact that the revenue laws imposing duties on woollen goods had attracted the special attention of Congress; that a higher duty had been imposed on woollens than on most other goods imported; and that this presented greater temptation to enter them below their real value, than the duties levied on other merchandise. He said it would appear in proof that Mr. Samuel R. Wood, the defendant in the cause, a British subject, resident in New York, had been engaged in the importation of woollen goods for a number of years; that he was the son of John Wood, of Saddleworth, England, who was in the habit of purchasing cloths and cassimeres in the Saddleworth market, and shipping them to his son in New York, who entered them as owner, taking the oaths prescribed by our laws, and producing invoices and bills of lading, and making entries accordingly. He also received consignments of similar goods from other persons, which he entered in like manner. On the face of the papers, presented by the defendant at the custom-house at the time of entry, nothing occurred, except in a very few instances, to excite suspicion in the minds of the

officers of the revenue; but it would come out in the proof, consisting, for the most part, of letters from defendant to his father, and of other documents which had come to the hands of the collector, that the defendant had entered his goods much below their real cost. *His custom was to produce an invoice, showing the cost to be only two thirds of the real cost in England; thus, by way of illustration, an article, the real cost of which was fifteen shillings per yard, was entered at ten shillings, and the duties were of course calculated on a false invoice and entry, and not on the actual cost of the goods.* The district attorney stated the law to be, that though the United States may have allowed entries by false invoices, and taken duties accordingly, yet they may afterward charge the duty on the real cost. If the goods were now in defendant's possession, or could be traced and identified, the United States might have a forfeiture of them. In this case, however, the goods having been sold and delivered, so as to be beyond the reach of the United States, there could be no attempt to forfeit them."

In consequence of the possession of the papers of this bankrupt, a very curious and edifying correspondence between the father and the son also came to light, from which I will read a few extracts to the committee:

"July 31, 1835.—I would not make altogether one price. I told you in my previous letters that you must invoice two thirds of their real value—that will be one third less. If you cannot understand this writing, I cannot tell you."

"September 15.—I have sold bale 535, &c.; this bale will leave you a great profit. If you make very cheap goods, must invoice a little higher;" [crossed out in the original]—"a slip of paper, and enclose it, and put cost on."

"November 3.—Yours by ship Virginia is duly to hand, with invoice of G. 537. I think you must have made a mistake in invoice. I don't see what kind of cassimeres they can be at 1*s.* 10*d.* per yard. *You will have to invoice over two thirds if you make cheap goods.*"

"May 24, 1836.—*You ought to alter* THE MARK AND NUMBER OF PACKAGES, ALSO NUMBER OF GOODS. *I told you if goods were cheap to invoice them more.* Nos 361 and 360, instead of 7*d.* more it is 7*d.* less; that makes over 20 per cent. I believe will not libel them. I cannot see what you are about. Please to look at my previous letters for twelve months back."

"You must come nearer the exact cost, and have your paper renewed till I can make a return. Headstrong work will not do, you may tell by seeing M. B. You must have seen one another, or you would not invoice so much alike. Mind what I have written now and in previous letters."

"June 25.—I have entered G. 576, &c., which I have passed, but they found a great deal of fault; the others I dare not enter till I receive new invoices."

"July 8.—Yours with invoices of four bales, (should have come by ship North America,) is duly to hand. I dare not enter them until I hear from you."

"August 3.—(After showing he was informed of cost price,) Only look; black cloths for this market, and invoices made out in the way you have. I can do nothing till I receive invoices."

"August 11.—I had such a scolding from the appraiser, that I do not like to go near the store, and it is all careless on your part of invoicing goods. If you bought them all for one price, you are not fit to purchase goods."

"September 8.—My uncle Thomas has goods cost only 8*s.* per yard better than yours 10*s.* or 11*s.* I have passed all my goods at custom-house. You must not take 5 per cent. off your invoices."

"November 24.—They do not like 5 per cent. off, because, they say, it is impossible to pay cash, so charge them as much less."

There is one other passage, which I feel some delicacy in reading, since it is scarce proper that such language from a son to his father should be uttered any where; but as some gentlemen express a curiosity to hear it, I will read it. He is complaining that his father is not sufficiently adept at his trade of deception, and he says:

"Enclosed is four patterns. If you do not feel ashamed of yourself, I do for you. It shall not be said I made your estate away. I will not receive any more such as these bales, for instance 8*s.* 2*d.*, no better than this pattern. By God, I never pay for them. God damn all such shipments; and as for such trash as the cassimeres, he would never send out any price. The satin faces are not fit for the

blacks to wear. Look at them! look at them! look at them! God damn it, look at them! This is such a lesson as I never had since I came to the country. I have not examined all yet."

"George R. Ives examined by the District Attorney. Witness is a merchant of this city, and an agent and attorney for the assignees of John Wood, a bankrupt in England, father to the defendant in this cause.

"This witness stated that, in May, 1838, he had received from England a certain original invoice book and certain letters of defendant to his father, dated at various times between 24th November, 1834, and 1st December, 1837; also certain accounts of sales by defendant, with paper containing lists of goods sold and unsold, said to belong to John Wood, and in the hands of S. R. Wood. Witness called on defendant, with these documents, on the night of the 29th or 30th of May. He admitted the authenticity and correctness of these papers to witness, who charged him with having, by means of false invoices, defrauded the United States. This charge defendant admitted to be true, but, in palliation, said he had done no more than other Yorkshire importers had done. It was the general course of business. Defendant surrendered all his property to witness, amounting per estimate to $35,825, part of which witness remitted to assignees in England, and had remaining in his hands, after settling John Wood's debt, about $8,000 or $10,000 in real estate, and choses in action and money from $10,000 to $12,000. Defendant at first denied that he had entered his goods in the manner stated, and refused to deliver up his property."

"Witness told him he must have known the true prices. Witness showed him the letters, papers, and invoice book now in court, and pointed out to him the long and short prices in John Wood's invoice book, and said defendant then admitted to him that he had entered the goods on the short prices, and knew of the intended fraud."

"The witness here stated how the collector of the port came in possession of the letters and documents, having first received a letter from the American consul at Liverpool, giving notice of the fraud as detected by the assignees. Witness had no pecuniary interest in the event of this suit, and would rather have paid $500 than have been examined."

"Congress had prescribed certain oaths, to be taken by the importer in lieu of the old oaths, varying according to the nature of the case. First, the oath of a mere consignee, importer, or agent; then the owner's oath in case of goods *actually purchased;* then the owner's or manufacturer's oath where goods were not purchased. There is a marked difference between the oath of the owner when goods are actually purchased and the other oaths. The latter have reference to the fair market value at the place where procured, the former to the *actual cost.* The defendant in this case was an active party making these importations, and the law refers to him for the designation of his character and interest. He has entered the goods as owner, under the owner's oath, when actually purchased. The oath was here read to the jury."

"They stated that, in a few cases, they thought the goods were too low charged; that a formal appraisement was made, and the goods raised by the appraisers; but that in one instance the collector, Mr. Swartwout, had permitted the entry by invoice after appraisement. The greater proportion of defendant's goods examined were passed by the invoices, and found to correspond therewith."

"The testimony was here closed, the District Attorney claiming, after deducting the 17 packages actually appraised, a balance of $12,807 39 of principal, and $2,047 10 interest, equal to $14,854 49."

"He stated the basis on which the duties on woollens were to be levied, in the cases of owner, manufacturer, and consignee respectively, to be in all cases the actual value abroad, with charges added, and the rate of duty at 50 per cent. ad valorem."

"The District Attorney replied that there were numerous allusions in the letters to Mr. Broadbent, one of the shippers, from whom most of the goods not shipped by the father came; that his goods were of the same description as the goods sent by John Wood; and that Broadbent's invoices would show that his goods were entered at about the same prices as those of John Wood; this was also the case with the invoices of Marshall and the others; from all which he should insist that the mode of invoicing in all the cases was substantially the same."

"On the 12th June the Jury came into court with a sealed verdict, finding for the United States $12,278 76, with costs."

Let these extracts suffice; they sufficiently show that both father and son were exceedingly skilful in the English law, so far as it applies to the revenue duties of other countries.

I will now read to the committee another authority: it is a letter from Bordeaux, which I have received through a different channel, and it may show the gentleman from South Carolina (Mr. RHETT) that this bill has not been reported in quite so crude a state as he seems to suppose.

"It seems to me that the time is now arrived when some measures are loudly called for to protect our revenue from fraud, and I firmly believe that the consular certificate to *all* invoices would, in many cases, lead to its detection.

"Many persons ask what is the use of the consular certificate when the goods are free of duty, or pay specific duty.

"The following circumstance which has occurred in this port will prove the use of such certificate. There is at present here an immense quantity of wine shipping for New Orleans. I was recently informed that a great many boxes had been made, purporting to contain wine in bottles, but so fitted up, with false lids, as evidently to be designed to be filled with dry goods. I have, of course, communicated this information to the collector of New Orleans, in case these boxes are to be sent there. But if every invoice was submitted to the consul's inspection, I am certain that, from the data I have, I could put my finger on this particular shipment, and secure the detection of the fraud. Indeed, the late seizures in the United States and various circumstances must convince every one that some additional means are required to protect the revenue; and the great reluctance of many shippers to have their invoices verified by the consul is of itself a proof that it is a precaution which interferes with the practice, now much used, of making out the invoice *after the goods arrive*, so that the *original invoice* from abroad is often withheld. In this country particularly such a regulation is loudly called for in the interest of our navigation. The want of it enables French vessels to carry all kinds of foreign goods to the United States without their being subjected to additional duties, in consequence of no regulation requiring their invoices and manifests to be certified by our consul; whereas all American vessels arriving in France are bound to produce these certificates on their manifests from the French consuls on the other side.

"Our shipmasters, as you had an opportunity of judging, complain that French vessels enjoy this immunity, and with good reason. The evil will become of still greater magnitude when lines of French steamers are established between France and New York. This will take place ere long inevitably, as the French government will furnish the funds if necessary. And, unless the regulation I suggest is adopted, all the Swiss and German goods that are now shipped in our packets will be sent in the French.

"The present regulations of our custom-houses require that all invoices of goods shipped for the account of persons residing out of the United States should be certified by the consuls. This, of course, exempts all others from that formality. Now, it is perfectly well known that the great and important shipments are made by the European manufacturers for their own account. They all, however, have an agent or confidential clerk in the United States, to whom the goods are ostensibly shipped for *his* account and others. The consular verification is evaded. Let every invoice be certified, and we should know who the proprietor is, and whether he is the manufacturer or not, as there would then be no motive in concealing that fact. On the other hand, supposing the goods are *really* shipped for account of persons in the United States, the shipper has no motive for making a false declaration before the consul. In every point of view, therefore, such a regulation would be attended with useful results, among which the following are the most obvious:

"1st. Securing the production of the original invoice.

"2d. Preventing the difficulties that frequently arise from the shippers ignorantly shipping spirits, &c. in smaller packages than the law allows, and thus exposing the vessels to seizure.

"3d. Enabling the consuls to explain to every shipper the consequences of infringing our laws, which would often deter them from attempting it, as has happened repeatedly within my experience.

"4th. Enabling the consuls to communicate valuable statistical information to the Government. This they are required to do, and have it not in their power.

"5th. Enabling the consuls to verify the truth of information they may receive of intended frauds on our revenue by false descriptions of the goods.

"6th. When the goods are shipped in foreign vessels, and subject therefore to higher duties, if not of the produce of the nation to which the vessel belongs, the consular certificate would afford the most certain evidence of the fact, and be the best criterion as to what duty the goods should pay.

"The best mode of securing the verification of all the invoices on board of each vessel would be the following: To require, under a penalty, that the ship's manifest should, after all the shipments are noted, be produced to the consul, and certified by him that all the invoices therein set forth had been duly attested before him. This certificate should be gratuitous to our vessels, and to vessels of such nations that make no such charge to ours. All others should pay the usual fee. The present system of requiring bonds to produce the consular certificate within eight months is nugatory. The bonds are forfeited, and never put in suit. Besides, what use is it for the invoice to be certified so long after. Certifying the manifest, at once secures the execution of the law; and making the service free of expense, in our vessels, will induce the captains, who all call loudly for such a regulation, to inform each shipper at the time of signing the bills of lading of the necessity of complying, and doing away with the excuse of ignorance, now put forward on all occasions.

"The form of the consular certificate should be left to the Secretary of the Treasury, to be adapted to the various exigencies that may be presented, whether as relating to the description, the value, the origin of the goods, &c.; so that, in no case, could any invoice require two certificates, as might occur if the form was too positively prescribed by law."

One of the amendments I propose is to strike out the words "each bale and package," wherever they occur in the second section. The passage reads now as follows:

"Sec. 2. *And be it further enacted*, That it shall not be lawful for any principal appraiser of any port or district where there are assistant appraisers, to report to the collector on any invoice or appraisement of goods without personally inspecting and examining *each bale and package* of the goods referred to in such invoice or appraisement."

But the collector has represented that such an arrangement is impracticable; that it would require an army of officers twice as great as that now employed to carry it into effect; but then you see the advantages which are taken in consequence of having but one or two packages examined. Here boxes were made with double covers, purporting to contain wine, but being actually filled with dry goods. These were shipped from France to New Orleans, and thence to Cincinnati, where the fraud was discovered. The consignee was prosecuted, but it happened unfortunately that the evidence in possession of the collector proved, in some respect, defective; and not only did the consignee escape, but he turned round and sued the surveyor of the port for damages on a false seizure. The party here concerned was one of those same Yorkshire clothiers.

I trust I have now presented to the committee sufficient reasons to show that the motion to strike out the enacting clause of this bill ought not to prevail. If there are defects in its provisions, let them be remedied by the suggestion of proper amendments, but in some shape the bill ought certainly to pass, and I yet hope for the vote of the gentleman from South Carolina himself, notwithstanding all his opposition to American manufactures, and notwithstanding that powerful objection that the passage of such a bill may possibly prevent Samuel Swartwout from becoming President of the United States. [A laugh.]

I am ready to adopt any proper and reasonable amendment. I seek to deprive no citizen of his right to a trial by jury; but, while I would secure all his constitutional rights, I would provide, if possible, an effectual remedy against these abominable frauds.

I must confess that, what the gentleman said about American manufactures brought powerfully to my mind something I had once heard said of

another very distinguished anti-manufacturing gentleman, who was possessed with such an utter hatred of manufactures that he said he would at any time go a mile out of his way to kick a sheep. [A laugh.]

The gentleman from South Carolina, I believe, does not go quite so far as that, but the gentleman has brought himself to the conclusion that this Government ought not to impose any impost at all, but ought to lay a direct tax. Now, if the gentleman will introduce a bill into this House levying a direct tax on land and slaves, and if his constituents like it, and if he can satisfy me that direct taxation is a better mode of raising revenue than the system under which we have lived for the last fifty years, I promise him my aid in carrying through his bill.

I now ask that the bill may be taken up and considered by sections.

Mr. DAVIS, of Indiana, here inquired of Mr. ADAMS whether the bill had been reported with the unanimous assent of the Committee on Manufactures?

Mr. ADAMS replied that so he understood the fact to be. It was reported without the opposition of any member, though perhaps there might be some who did not approve of all its details. The committee, while preparing the bill, had been in constant correspondence both with the Secretary of the Treasury, with whom he had had several personal interviews, and with the collector of New York, through him. The Secretary had examined the bill fully, and had suggested such additions to it as he thought fit.

Mr. DAVIS here called the attention of the committee to an editorial article in the New York Express of April 9th, in which the bill was spoken of in very derogatory terms. Mr. D. observed that the editor stood very high in his reputation for commercial knowledge.

Mr. ADAMS replied that similar paragraphs might be seen in other New York papers, and other paragraphs replying to them. The gentleman could have no difficulty in believing that these Yorkshire clothiers, who made a business of defrauding our revenue, very well understood the mode of filling the New York papers with invectives against custom-house officers and revenue laws, especially such as were directed to prevent fraud.

As to the collector of New York receiving under this bill a portion of the forfeitures incurred, the committee would be satisfied, when they came fully to understand the matter, that the practical effect of the bill would be to diminish, and not to augment the amount received by that officer.

Mr. SERGEANT, of Pennsylvania, was opposed to the motion to strike out the enacting clause of the bill. He was not prepared to say that he was fully satisfied with the details of the bill, one or all of them. Whether they were defective and fell short of the end proposed, or whether they went too far in conferring power on the collector, were questions to be considered under the respective sections as they should come up in order, but the bill well deserved the consideration of the committee, if for no other reason, for this, that there existed a strong impression throughout the United States, that gross frauds are perpetrated in and upon our custom-houses, especially in and upon the custom-house at New York. Mr. S. referred to some cases where goods were said to have been fraudulently entered by collusion with a high officer of the custom-house at New York, who had since been removed, and argued to show that whether these impressions were well or ill-founded, they presented a valid reason against precipitately rejecting this bill. The House could only inquire as to the sufficiency of the law: if the defect lay there, then undoubtedly the officers of the revenue were not so much to be blamed; but if there was no material defect in the law, and extensive frauds were still perpetrated, the fault must lie in the men intrusted with the execution of the law. In either case investigation was necessary. These frauds operated not merely as an injury to the revenue, as well as to the American merchant and man-

ufacturer, but they produced an infraction of the Constitution, which required equality among the citizens in the payment of duties.

Mr. S. here went into a recapitulation of the several acts for the collection of revenue since 1799, and a statement of some of the difficulties which arose in practice from this multiplicity of acts, whence he further inferred the necessity of Congress taking up and investigating the subject, collating the existing laws, and inquiring whether the evils complained of could or could not be remedied by further legislation. The penalties in the present act went beyond those in previous laws, and might do great good; but the most important and efficient of all preventives of fraud was the appointment of faithful and capable officers. He fully believed that such men could be found at every point where their services were required. They had been employed for years and years under Washington, and Adams, and Jefferson, without a shadow of suspicion or complaint. He was sorry the same could not be said for years past. If competent and faithful men were not to be employed, then our laws must be so framed as to guard more carefully against rogues. He hoped the enacting clause of the bill would not be stricken out, but that it would receive a full and deliberate consideration.

Mr. TILLINGHAST, of Rhode Island, replied to the inquiry which had been made by Mr. Davis as to the unanimity of the Committee on Manufactures in reporting the present bill.

In regard to the principle of the bill, the committee had entirely agreed; though, with respect to its details, there had been some difference of opinion. It had been reported under the strongest recommendation of the Treasury Department, who hoped that its operation would correct the frauds against the revenue, while at the same time, it protected the interests of our own manufacturers.

Mr. T. hoped the motion to strike out would not prevail. He thought the gentleman from South Carolina would, on further examination, find that some of the objections which had presented themselves to his mind were not so formidable or so well founded as he supposed. As to the examination of witnesses, the present bill conferred no more power than already existed under former laws. The inquiries of the collector were treated with scorn, the consignee refused to answer, and had only to pay his fifty dollar fine and get through his goods. Such a state of things called for a remedy. As to the gentleman's constitutional objection about making the collector a judicial officer to adjudge fines which he was himself to share, the committee did not so understand the operation of the bill. The bill provided that the forfeited goods were not to be distributed save according to law, and in construing the law the Constitution was, of course, to be held supreme. If any clause in the bill, however, was supposed to be ambiguous in its terms, Mr. T. was willing it should be amended so as effectually to guard the rights and property of the citizen, while at the same time, it enforced the laws of the land. On the subject of evidence, there was some difference of opinion in the committee. He should prefer himself to leave open the question of competency, and let the jury decide as to the credibility of the testimony submitted to them. The powers conferred in the bill were confessedly great, but so were the evils to be remedied.

Mr. RHETT explained the reason of his motion. He had begun by stating that, whatever the laws were, he wished to see them enforced. He was not opposed to the bill on that ground, but wished to see it amended. With this view he had moved its recommitment, and it had not been until that motion was pronounced out of order that he had moved to strike out the enacting clause. He was willing to withdraw this motion. Let the committee rise and report the bill to the House, with the understanding that it be forthwith committed. The committee which had brought it in

having now had an opportunity to hear the objections urged against it, would have an opportunity to revise their own bill. A Committee of the Whole was not the proper place in which to go into all the details. It was manifest that the committee themselves held the bill to be very imperfect, for they themselves had proposed from fifteen to twenty amendments. That fact alone formed a sufficient reason why it should be recommitted. He would now withdraw his motion to strike out the enacting clause.

The gentleman from Massachusetts had not touched any one of the objections Mr. R. had urged against the bill, and the only reply attempted by the gentleman from Rhode Island (Mr. Tillinghast) was, that the bill conferred no more power than the law of 1832. This was no answer. If the law of 1832 conferred a power which violated the Constitution, then the law of 1832 was itself unconstitutional and void. Mr. R. was always in favor of protecting the rights of the citizen rather than those of the government. The government was strong, the citizen weak. As to the clause empowering the collector to adjudge the question of forfeiture in which he was himself personally interested, its language was too plain to be misunderstood:

"And if such owner, importer, or consignee, on being served with personal notice one day before the time appointed for attending before such collector or appraiser, shall fail to attend, unless prevented by sickness or by the consent of the collector, or, when attending, shall decline to answer such interrogatories or questions put by such collector or appraisers, or shall fail to produce any of the letters, accounts, or invoices before referred to, when and in the manner required by said collector, such merchandise shall be forfeited, and the proceeds thereof distributed according to law."

Here it is provided that the goods shall be distributed at once, and the collector is to take one half. What use could there be in a jury trial, to be held afterwards? The goods were already distributed, and such trial would be a farce.

Mr. TILLINGHAST replied that the bill did not provide that the goods should be distributed at once, under refusal of the consignee to answer; it declared such refusal to be valid cause of forfeiture; but, before the goods were actually forfeited or distributed, there must be a jury trial to settle facts. The provision, in this respect, was similar to the law of 1832, against which no complaint was made. The law of 1832 inflicted a fine of $50, but that fine could not be exacted till after due process of law.

Mr. RHETT replied that the gentleman himself had said that, under the law of 1832, the importer treated the interrogatories of the collector with scorn, paid his $50 fine, and got his goods through.

Mr. TILLINGHAST explained. He had not meant to say that the importer paid his fine instanter on the spot, but paid it after prosecution, on due process of law.

Mr. RHETT. Well, what difference does it make? What is the defence of a man who shall be brought up and tried for his refusal to answer? He could only plead the general issue—the fact of his refusal would then be proved, and thereupon the goods would be forfeited and distributed. If the object of the bill was such as the gentleman stated, the word, instead of "forfeited and distributed," should have been "seized;" but even that would be against the Constitution, according to Mr. R.'s view of it, and the question of fraud would not come before the jury at all. Mr. R. did not care a button for the law of 1832. If a citizen was to lose his right to a trial by jury, it was no matter under what law he lost it. The Constitution was equally violated; nor could that doctrine be too often, nor too earnestly, pressed on a free country.

Mr. R. expressed his regret that the gentleman from Massachusetts (Mr. Adams) should have said in his place that the legislation of England was intended to encourage fraud. The exception in the act against wager

policies did not apply to the United States, but only to Spain and Portugal. The act went to protect the revenue of this country; and was the gentleman to raise up a war cry in that House on such grounds as these? Did it become us thus to stigmatize the greatest commercial nation upon earth? Was the gentleman to be tolerated in casting such reproaches on the great body of British merchants? The truth was, that here existed an interest which was hostile to all foreign nations, and wholly separate from the great body of our own citizens—he meant the body of manufacturers. They were always at enmity with the trade of foreign countries, and they always arrogantly claimed themselves to be the country, and their interests her interests. Whenever, therefore, the tariff was brought in question, Congress was sure to hear foreign nations maligned as being prepared to plunder the country, as being in a conspiracy to destroy its vital interests. Was this consistent with that comity which ought ever to be preserved towards other nations at peace with us? Mr. R. was not the eulogist of England. He believed the commercial classes in all countries were pretty much on an equality, and whenever money was to be made by the perpetration of frauds, some base and selfish men would ever be found ready to purchase property on such terms. Indeed, one great objection to the tariff was its inherent and necessary tendency to demoralize the community. Look at the cumbrous legislation of England, whose protective and prohibitory statutes filled volumes on volumes, and all without effect. So long as gentlemen would keep up a high tariff, they offered a bribe for frauds, and shook the interests of fair commerce to their foundation. The proper remedy for these frauds on the revenue was not to be found in unconstitutional penal statutes, but in a reduction of duties. The system of the tariff was a system of corruption, fraud, and war; in fact, all the wars of modern times had had this for their real source—they were wars of rivalry and commerce undertaken to deprive other nations of some commercial advantage to secure it to ourselves.

Mr. R. had not the slightest idea that this bill would operate to suppress fraud. Gentlemen might bring in a bill as long as from New York to Washington, and it would all be in vain; frauds would still go on. All history proved this; they could not be prevented. There was no villany so atrocious, to the perpetration of which foul agents would not be found, so long as it was attended with great and immediate gain.

Mr. R. concluded by moving that the committee now rise and report the bill.

The CHAIR pronounced that motion debateable.

Mr. SERGEANT said that he had not been in the House yesterday when the gentleman from South Carolina (Mr. RHETT) had brought forward his objections to the bill; but, from what he had now heard, and from what he saw in the papers, he was disposed to think that the gentleman had laid down his position without due consideration and the requisite qualifications, although he might be substantially right. He was surprised that the gentleman should think of defending that extremely immoral principle in the laws of England to which the gentleman from Massachusetts (Mr. ADAMS) had alluded. It inculcated no respect for the revenue laws of other nations, insomuch that a contract based upon the violation of those laws might not be declared void. This was clearly and undeniably immoral. Nor was it unfair to charge such a purpose on England, who was at this very moment actually making war on a foreign nation because that nation insisted upon enforcing its own revenue laws, and would not consent to be poisoned to aid the interests of British commerce. Here was a practical application of the same principle of so shocking and so monstrous a nature that no man could have believed that a Christian nation, at this time of day, would seriously think of shedding blood in the enforcement of it. So far had England carried this disregard to the

revenue laws of other nations that it came at last to this, that no foreign nation should have any laws of any kind which interfered with the profits of English merchants. It was therefore more important than ever that this immoral principle should be expelled from our own laws, and resisted when attempted to be applied to us. Mr. S. was ready, here or elsewhere, cheerfully to exert what faculties he possessed for the attainment of such an object.

He was opposed to the rising of the committee. He thought this was the proper place in which to discuss the bill; and he hoped the committee, having it now in their hands, would proceed to consider, amend, and perfect it.

In reply to the last observations of Mr. Rhett, Mr. ADAMS said: The gentleman from South Carolina had entirely misapprehended the object of his remarks upon a principle of the commercial law of England. Far from being disposed to raise a war-cry against England, there was nothing more remote from Mr. Adams's purposes and views of the policy and interest of both countries at this time. He was happy to be firmly convinced that there would be no necessity for a war, even with regard to the question of the Northeastern boundary; and he heard with great pleasure the very friendly and pacific sentiments expressed by the gentleman from South Carolina towards the government and nation of Great Britain, which he hoped the gentleman would retain, in all their force, when the House should come to consider his resolution respecting the case of the Enterprise.

Mr. Adams said that of the English nation he entertained sentiments of the most exalted admiration; that he was proud of being himself descended from that stock, although two hundred years had passed away, during which all his ancestors had been natives of this country. He claimed the great men of England of former ages for his countrymen, and could say with the poet Cowper, in hearty concurrence with the sentiment, that it is

> "Praise enough
> To fill the ambition of a common man,
> That Chatham's language was his mother tongue,
> And Wolf's great name compatriot with his own."

He believed that no nation of ancient or modern times, was more entitled to veneration for their exertions in the cause of human improvement than the British. He thought their code of laws admirable, but, in the discussion of the bill before the committee, he had been compelled, in the discharge of his duty, to expose one great erroneous principle of morals incorporated into their laws—a principle, the natural and necessary consequence of which had been the occasion of the bill now before the committee—a principle enacted by the British Parliament and sanctioned by the decisions of their highest judicial tribunals, with the express and avowed purpose of encouraging the subjects of Great Britain to the practice of defrauding, even by the commission of perjury, the revenues of a foreign country.

SATURDAY, MAY 9, 1840.

The 9th section of the Bill, as reported to the House, was as follows:—

"Sec. 9. *And be it further enacted*, That whenever a suit shall be tried in any court in the United States in which is involved any question of duties on importations of goods, wares, or merchandise, no person having an interest in such question shall be competent as a witness on such trial, unles called to testify by the adverse party."

The amended section proposed by the Committee on Manufactures to be adopted, was in the words following:

"Sec. 9. *And be it further enacted*, That, whenever a suit against any collector or other officer of the customs for the seizure of goods, wares, or merchandise unlawfully imported into the United States, or forfeited for the unlawful entry of the same, shall be tried in any court of the United States, in which suit is involved any question of duties on importations of goods, wares, or merchandise, no person having the same interest with that of the party to the suit in the question at issue shall be competent as a witness on such trial, unless called to testify by the adverse party."

At the request of Mr. ADAMS, Mr. BRIGGS read the explanations by the Collector of the Customs at New York in relation to this section of the bill, as prepared by him in consultation with the District Attorney of the United States at that place; which explanations are as follows:

"Sec. 9. The general rule of evidence is, that a person is not rendered incompetent as a witness unless he is interested in the *event of the suit*. This rule requires modification. It has become very fashionable of late to pay the collector duties under protest, and some importers pay nothing without taking this step. The collector has now pending against him about thirty suits. One firm will commence a suit, and all others interested in the *question* will be called on as witnesses, and the verdict, as a matter of course, goes against the collector, and the Department is then called upon forthwith to refund all the duties that have been paid under protest, and very soon all that may have been paid, no matter how long since, not under protest.

"We had a striking case of the kind at the last term of the Circuit Court. A suit was tried against the collector, brought by James Hall, involving a question whether 25 per cent., the hosiery duty, or 50 per cent., the ready-made clothing duty, was properly assessed on an article of shirts and drawers made up. The plaintiff called several witnesses who admitted before the court and jury they had the same controversy with the collector, and all were permitted to testify, and some even who had causes on the same calender of the court; and, as a matter of course, there was a verdict against the collector. By the technical rule they were competent witnesses. In this manner the revenue laws are made and construed, and Congress, it will be seen, has no longer any thing to do with making a tariff, and the Secretary of the Treasury, if this system is permitted to go on, will not have the power of keeping any thing in the Treasury, if he is happy enough to get it there. The technical rule of evidence applicable to the case cannot be changed short of legislation, and therefore I appeal to the only remedy that can be applied."

Mr. ADAMS began by observing that it appeared from the explanation of the section by the collector at New York, which had just been read, that on the trials of these causes relating to the collection of the duties on imports, the courts of the United States were in the practice of admitting as competent testimony to go to the jury, witnesses who, though not being parties to the suit itself upon trial, had the same interest in the question at issue as the party to the suit, and even subsequently on the same docket causes against the collector in which the issue of the suit depended upon the same identical question.

Mr. ADAMS said he did not know upon what grounds the courts of the United States had adopted this principle, conformable indeed to English precedents of late years, but not of an earlier date than the establishment of our national independence, and therefore of no positive authority in this country.

It was here stated by Mr. BARNARD that he understood the principle to be of long-settled standing, and universally recognised by the common law.

To which Mr. ADAMS replied, that he would adduce authorities from the most recent and most respectable English writers upon the law of evidence, which had brought him, and which he hoped would bring his friend from New York to a different conclusion. The principle of the English common law, as he believed, was that which it was the purpose of this section of the bill to restore, namely, to exclude the testimony of witnesses in-

terested in the question upon which they were to testify, though not immediately interested in the event of the suit itself. The innovation upon this principle was traceable to the same person to whom he had yesterday traced the dishonest maxim of English commercial law, that a British subject may lawfully defraud the revenues of nations other than his own. And it was traceable to the same source—the character, genius, and education of Lord Mansfield. It had produced consequences still more momentous to the history of the world, for it was to that man, more than to any other of his age, that the Revolution of North American independence was to be attributed. Of this *result* we certainly have no reason to complain, for he rendered us a service like that of the hypothetical case mentioned in some of the law books, of a man who, intending to murder another, hurled a spear at him, but, instead of putting him to death, opened an abscess, and thereby saved his life. He (Mansfield) was a native of Scotland, where the civil law, the code of Justinian, had, from time immemorial, formed the basis of the law of the land. He had been educated to the civil law, and in his younger days a jacobite devoted to the cause of the Pretender of the House of Stuart. He transferred his allegiance to the House of Hanover, and with it brought to their service his transcendent talents and his despotic principles. At the period of our Revolution, he was at the head of the judicial authority of Great Britain, and it was under the influence of his principles, drawn from the law of despotism, that George the Third was brought honestly to believe himself justified in ravaging, with fire and sword, English colonies, to maintain the right of taxing them without their consent. Mansfield was for many years Lord Chief Justice of the Court of King's Bench, a court of English common law. But he spent his life in devising expedients to engraft upon it the maxims and principles and practices of his favorite civil law. There are many of the relations in the social intercourse of mankind, which are regulated in both those systems by the same principles. But the systems themselves are totally distinct, and, in many respects, widely different from each other.

The civil law is a system composed of materials collected through a long succession of ages, and compiled at a late period of the Roman empire for the government of a people the most warlike, and at the same time the most commercial, that had ever existed upon earth. Its principles had been gathering into one system, compounded of decrees, ordinances, and rescripts, with judicial opinions, resulting from the multifarious relations in war and peace of a nation embracing at last the largest portion of the civilized race of man. Its provisions, therefore, with regard to the domestic relations of life, are nice, discriminating, refined, and in many respects admirable. But it is not the law for liberty. It is not the law of stern and rigid morality. The head of that Government was an absolute monarch, avowedly above the law, and absolved from its obligations. *Imperator Cæsar Augustus legibus solutus.* In such a Government, this man was every thing, and every other individual of the empire nothing. The life, the liberty, the property, the reputation of every man of the empire was always at his mercy, and wo was it to the man who incurred his frown. And this same system, by which he held all this at his disposal, descended through a thousand veins and arteries to every subaltern officer of his Government. Very different was the system of the common law as it had existed in England from the days of Alfred. It was the law of a people in a much earlier stage of civilization. There was much less of refinement in the principles of its establishment. It was, comparatively speaking, a rude and barbarous code. But human liberty was there, and not in the code of Justinian. Trial by jury was there. The habeas corpus was there. Its principle was, *no freeman shall be taken or imprisoned but by the judgment of his peers, or by the law of the land.* No tyrant could

seize his person but upon charges of trespass upon the laws. It was a law, too, of purer principles, and of sterner morals. Take, for example, the different principles of the two codes in the case of a bond. A man owes you the sum of five hundred dollars; he signs and seals an instrument pledging his faith to the payment of it at a given day, upon the penalty of one thousand in the event of his failure. The day comes and passes without the payment made—you sue the man upon his bond, and the common law decrees that he shall pay the penalty of the whole thousand dollars, because that was his promise, and to the performance of his promise the common law dooms him to be held. The civil law steps in and relieves him from the burden of his inconsiderate promise. It compels him to pay you the amount of his debt, together with so much as you have suffered in damages in consequence of his non-payment at the day. Here you see the principle of the common law is rigid adherence to the pledge of faith in the promise. The principle of the civil law is relaxation from the inflexible obligation of a promise by indulgence to human frailties. Take another example, far more widely famed—that celebrated in English history by the refusal of the Barons of England to enact that children born before marriage should be legitimated by the subsequent marriage of their parents. By the principles of both laws it is the marriage that points out the father. *Pater est quem nuptiæ demonstrant.* The child born in wedlock is by the common law legitimate; born before marriage, he is not. The civil law legitimates a child by the subsequent marriage of the parents. At the Parliament of Merton, in the reign of Henry the Third, the Bishops proposed and petitioned that the common law in this respect should be changed, so that children born before marriage should be declared legitimate by the marriage of their parents afterwards; because the Church, by the canon law, which was a part of the civil law, held them to be such. And the record tells you that all the Earls and Barons of England, with one voice, answered that they would not change the laws of England which, until that day, had been used and approved. "*Nolunt leges Angliæ mutare:*" such was the noble answer of the Peers of England at Merton, and that law, thus sustained by them, is yet the law of England and of that portion of our own country which is of English descent. For here again you see the difference of principle between the two codes—the common law surrounding the marriage contract with a holier sanction, and the civil law yielding with more indulgence to human frailty. And whoever studies the two systems will find these differences of principle pervading them through all their parts. The civil law is the law of an absolute monarchy, and of a people steeped in corruption. The common law is the law of a people far less refined, far less vicious, and far more regardful of human rights. This beautiful system, says Montesquieu, was found in the woods. Referring particularly to the principles of evidence in the trial of controversies between man and man, the civil law, where the judge is at once the arbiter of the law and of the facts, admits the declarations of the parties themselves to the suit as competent testimony to the cause. By the general principles of the common law, where the trial of the facts is by a jury, the parties themselves, and all other persons having the same interests in the question at issue as the parties, are excluded, as incompetent to testify before the jury to the facts. From the time of Lord Mansfield, the English judges in the courts of common law have been relaxing from this principle of exclusion, until they have narrowed it down to include only persons interested in the event of the suit itself, so that persons having suits in the same court and depending on the same question are admitted to testify merely because their interest is not directly in the event of that suit. Such has been the leaning of the English common law judges from the time of our Revolution. Such, too, has been the tendency of English legislation; and yet so little conformable

has this tendency been to the primitive principles of the common law, that, down as late as the third and fourth year of the reign of their last King, William IV., a long act of Parliament was found necessary to extend still further this admission of interested witnesses as competent evidence in judicial causes between individuals.

The general principle of the common law of the exclusion of interested witnesses is thus stated in Gilbert's Law of Evidence, cited by Phillips in the latest English treatise on the subject:

> "When a man," says C. B. Gilbert, "who is interested in the matter in question comes to prove it, it is rather a ground for distrust than any just cause of belief, for men are generally so short-sighted as to look at their own private benefit, which is near to them, rather than to the good of the world, which is more remote; therefore, from the nature of human passions and actions, there is more reason to distrust such biassed testimony than to believe it."—*Phillips on Evidence*, 1. 43.

Observe, here, that the principle of exclusion is founded in the *interest* of the witness, not in the event of the suit, but in the *matter in question*, and that which occasions the bias upon the mind is precisely the same, whether the interest is in the event of that suit, or in the event of another suit depending upon the same question, and standing perhaps next to it upon the docket. The distinction which excludes the witness interested in the event of the suit, and admits the witness having the same interest, though in the event of another suit pending on the same question, is a Scottish metaphysical distinction, of the Mansfield coinage, founded not on the passions and prejudices of the human heart, but upon the subtlety of technical records. My learned and honorable friend from Pennsylvania (Mr. SERGEANT) says that the exclusion of witnesses for incompetency is disrespectful to the jury; but that objection goes to the whole principle of exclusion, even of the parties themselves. Why not admit the parties to testify before the jury, and let the question of bias upon their minds go to their credibility, and not to their competency? Possibly this may be more conformable to the philosophy of evidence, but it is not the principle of the common law. Lord Chief Baron Gilbert has answered in the citation just read from Phillips that question, why not admit the party to testify in his own cause? We are not now inquiring whether this answer is or is not conclusive, but what was the principle of the common law? That law, of which trial by jury is perhaps the chiefest glory, did not consider it disrespectful to the jury to exclude from their hearing the testimony of the parties to the cause upon trial before them, and of persons interested in the matter in question. And it is not more disrespectful to the jury to exclude them from admission in one case than in the other. There is, undoubtedly, much to be said on both sides of this question; but, for my own part, I must confess that, from my experience of mankind, I am inclined to believe that the distrust which disqualifies interested witnesses from the hearing of the jury will, in the general course of events, be more conducive to the administration of justice than their indiscriminate admission. I hold it even more respectful to the jury, for, if the interested witness be admitted to testify before them, the natural and laudable disposition of honest unsophisticated minds to believe the assertions of another, would be more likely, in every case where no special objection could be urged against the veracity of the witness other than his interest in the question, to be led astray by the assertions prompted by the bias of that interest, than it would be by not hearing his testimony at all. And this, I have no doubt, has been the case in many of the instances referred to in the explanation of the collector at New York. The juryman hears the testimony of the interested witness: he says to himself, this man is a lawful witness; no special objection to his veracity has been urged; why should I not believe him? His interest in the question is not an interest in the event of this suit, and

the law which would have excluded him in the other case acknowledges him as a competent witness in this: why should I not believe him? And every other man upon the jury will ask himself the same question, and the cause will be decided exclusively upon the testimony of interested witnesses, because no positive proof of perjury or of falsehood can be produced against them.

The general principle, then, of the common law was, that no person interested in *the matter in question* was admissible as a competent witness; and Gilbert, after stating this general rule, considers the exclusion of the parties themselves from being competent witnesses in their own cause as a *corollary* deducible from it. *Phillips on Evidence, vol.* 1, *page* 47. But Lord Mansfield, who, on one occasion, said that the common law was inclined to rigor, observed, in another, that the old cases on the competency of witnesses have gone upon very subtle grounds, but, of late years, that is, from the time that he became Chief Justice of the King's Bench, the courts have endeavored, as far as possible, consistently with those authorities, to let the objection go to the *credit* rather than to the *competency* of the witness. And, in the process of this general relaxation, he proceeded so far that the subsequent judges of the common law courts have, in no small number of cases, retraced their steps, and gone back from his decisions to the more genuine common law school of Holt and Hale. The distinction between an interest in the event of the suit, and in the event of the question for the purpose of admitting one witness and of excluding another, under the same bias of mind, was of the Mansfield school. What says Phillips?

"In inquiring into the competency of the parties to the record in civil suits, it has been seen that, in general, they are incompetent to give evidence, by reason of a direct interest in the event of the suit. Many cases arise in which persons not being parties to the record are open to the same objection. * * * *

"But a direct and immediate benefit or disadvantage from the result of the suit was not the only species of interest which at one time rendered a witness, not a party to the record, incompetent to give evidence: for, until the passing of a recent statute, which has effected a material alteration in the law in this respect, witnesses who are neither parties to the record, nor had any direct interest in the event of the suit, were often rendered incompetent by reason of an indirect interest in the record with regard to some subsequent suit."—*Phillips on Evidence*, 1. 71, 72.

The relaxation from the exclusions of the common law was gradual and progressive in the English courts. But the distinction between interest in the event of the suit and interest in the event of the cause, appears to have been first taken in the case of Bent *vs.* Baker—in the year 1789, seven years after the close of our Revolutionary war, and when English judicial proceedings had ceased to be of any legal authority in our courts of justice.

In a subsequent case, Lord Kenyon, referring to the rule established in Bent *vs.* Baker, says:

"That case laid down a clear and certain rule, by which I have ever since endeavored to regulate my opinion. The rule there laid down was, that no objection could be made to the competency of a witness on the ground of interest, unless he were directly interested in the event of the suit, or could avail himself of the verdict in the cause so as to give it in evidence on any future occasion in support of his own interest."

And yet the rule in the case of Bent *vs.* Baker was not laid down so broadly as is subsequently stated in this last case by Lord Kenyon.

The case of Bent *vs.* Baker was against one underwriter, on a policy of insurance, and George Bowden, the broker who had effected the policy, and was himself an underwriter upon it, was produced as a witness on the part of the defendant. He was rejected by Lord Loughborough as an incompetent witness, being interested in the question at issue, though not

in the event of the suit. It was there said, in the arguments for the defendant,

"That it was expressly determined, in Rideout *vs.* Johnson, that one underwriter cannot be a witness in an action between other parties on the same policy. That that rule had constantly prevailed since, showing that if the witness be interested in the question put to him, it is the same objection as if he were interested in the event of the suit."

Lord Chief Justice Kenyon, after citing the dictum of Lord Mansfield which I have just read, and another of Lord Hardwick, said:

"Now, fortified with two such authorities as these, I have no scruple in declaring my concurrence, that wherever there are not any positive rules of law against it, it is better to receive the evidence of the witness, *making nevertheless such observations on the credit of the party as his situation requires.*"

In the same case, Justice Ashhurst said:

"There is so great a contradiction in decisions respecting the boundaries of evidence, that I rather choose to give my opinion on the particular circumstances of this case than to lay down any general rule on the subject. The witness was called to prove that an underwriter on the same policy was not liable. Perhaps in ordinary cases one underwriter cannot be examined as a witness for or against another on the same policy; but the particular situation in which this witness stood makes a great difference; for he had acted as the broker, and could not, by any act of his own, deprive either party of his testimony by his afterward signing the policy."

In the same case Justice Buller said:

"This case involves in it the question which has been so repeatedly agitated in courts of law, what objections go to the credit, and what to the competency of the witness? than which no question is more perplexed. I believe it was first held in Rideout *vs.* Johnson, that one underwriter cannot be a witness for another."

He afterwards adds:

"Then the remaining and principal question is whether this witness having subscribed this policy has thereby rendered himself altogether incompetent? because, if he were competent to answer *any* questions, he ought not to have been rejected generally. Then we must see whether on this record the fact to which he was required to speak might be such as he was competent to answer. On the principle of necessity alone, I think this witness ought to have been received."

And afterwards Justice Buller adds:

"The true line I take to be this: *is the witness to gain or to lose by the event of the cause?*"

And Justice Grose repeats the same reasons. He says:

"With respect to the general question whether the witness being interested in the question put to him shall render him incompetent as well as his being interested in the *event of the suit?* I think it is *better to narrow the objection* to those cases where the witness is interested in the *event of the cause.* So much has already been said on this subject that I am satisfied with declaring my assent to the rule that, unless the witness be interested in the event of the suit, he shall be admitted, except in those exceptions which have been established by solemn decisions."—3 *Term Reports, pp.* 27, 37.

Here, then, in this case of Bent against Baker, the distinction was first established between interest in the question at issue, and interest in the event of the suit. But many prior decisions had been exactly the reverse. And the case itself was upon a writ of error from a judgment of Lord Loughborough, a judge of as high authority as either of those judges of the King's Bench by whom his decision was reversed. He had rejected the witness at the trial as incompetent, on account of his interest, not in the event of the suit, but in the question at issue. And how was it re-

versed? Upon two principles: first, upon the propensity of Lord Mansfield to *narrow down* the objections to the competency of a witness as much as possible; and, secondly, because the broker was of necessity to be admitted as the only witness conusant of the facts. And subsequent judges enlarged the liberality of this admission till it has come to be a principle that one underwriter may generally be a competent witness upon a suit against another underwriter to the same policy.

But Lord Kenyon expressly says that, in admitting the testimony of the interested witness, the judge should make such observations on the credit of the party as his situation requires. Judge Ashhurst rather chooses to give his opinion on the particular circumstances of that case than to lay down any general rule on the subject. Buller, in the first edition of his work upon Nisi Prius, had laid down the opposite rule, and cited an authority for it; and Grose thinks it better to *narrow* the objection, thereby admitting that the practice before that time had been wider. It was, therefore, with much qualification that, in this case of Bent *vs.* Baker, the rule was laid down which admits the testimony of one underwriter upon a policy of insurance in a suit to which he is not a party, against another underwriter upon the same policy. Subsequent judges in England have adopted the rule without heeding the qualifications, and the judges in our courts of law, generally much disposed to follow the footsteps of their illustrious predecessors in England, have done the same thing, perhaps without stopping to examine thoroughly the moral principle of this departure from the principles of the English common law. For when it is examined, it appears to me it will not bear the test of a scrutiny. For what is it which disqualifies the interested witness? It is the bias upon his mind, and that bias is precisely the same whether it depends upon the event of that particular suit, or upon the principle which is to be settled by his testimony in it. The distinction, therefore, is not in the nature of evidence, but in the technical rule of the law. Not in the fountain of the human heart, but in the artificial barrier of a judicial decision. The authorities in Starkie's Practical Treatise on the Law of Evidence, and those upon which he relies, establish the same fact, that the distinction between the interest in the event of the suit, and an interest in the question at issue, was first laid down in the case of Bent *vs.* Baker. He says in page 746 of the second volume:

"Where the interest is of a doubtful nature, the objection goes to the credit, and not to the competency of the witness. He must either be a gainer or a loser by the event of the cause. To specify all the cases under which a witness is rendered incompetent by such an interest, would be impracticable. * * * If a party be really interested in the event of a cause, he is not competent, although he does not apprehend that his interest is a legal one."

And the same writer, in page 781 of the same volume, speaks thus:

"Formerly, the distinction between an interest in a particular *fact*, or question abstractedly, and an interest in the *event* of the particular cause then pending, was not sufficiently attended to; witnesses who were interested in the transaction, or question abstractedly, but who had no interest in the immediate event of the action, were held to be incompetent. Thus it was held that the master of a vessel, who had insured goods on board, was not competent for the plaintiff in an action by the owner of other goods on a policy effected on them; that is, he was held to be incompetent as a witness for the plaintiff, because he had an interest in the question whether an insurance on goods could, under the circumstances, be enforced, although he had no interest in the particular goods insured in that action, and although the result of that action would be in point of law perfectly irrelevant in proceeding to recover on his own insurance. Such a decision would no longer be supported, the proper test of competency being the interest which the witness has in the immediate event of the particular suit, or in the record, for the purposes of evidence, and any collateral or incidental connection of the witness with the transaction, although it may tend to influence or prejudice his mind, is immaterial.

Consequently, a co-underwriter is a competent witness for the defendant in an action upon the policy. So one mariner may prove wages due to another for the same voyage, in respect of which he himself has a claim."

It is clear, then, that the Court of King's Bench, in the case of Bent *vs.* Baker, altered an established rule of evidence in the English law by reversing the decision of Lord Loughborough, then Chief Justice of the Court of Common Pleas. They admitted as a competent witness a man whom he had excluded as incompetent. His decision was conformable to the law as it had existed until that time, not, perhaps, with an entire uniformity of the prior decisions, but with a preponderance of judicial decisions which he had considered as binding upon him. The case was a hard one; the broker, who had negotiated the policy, being the only witness who could testify to the facts. They admitted him, therefore, partly on the ground of necessity; and this not being of itself sufficient to satisfy their scruples, they recurred to the theoretical leaning of Lord Mansfield to the more liberal admissions of testimony recognised in the civil law, and narrowed down the exclusions which had until then prevailed, and which in that particular case appeared to operate too severely upon the defendant in the cause. Whether this case, and the subsequent English decisions still enlarging the admissibility of interested witnesses, have been admitted in all the Courts of the United States as irrefragable authorities, I do not know. They certainly have no authority of themselves, having all been adjudicated long after the consummation of our national independence. They have not, in my judgment, the authority of reason to sustain them. I say, therefore, that the provision in the section of the bill now under consideration is no innovation, but merely restores the old and sound principle of the common law. But there is in this case another principle in the law of evidence which will authorize the exclusion of those persons upon whom this bill is chiefly intended to operate. I mean those foreigners who come to reside here with the express purpose of defrauding the revenues of the country. It was yesterday demonstrated that by an act of the British Parliament, adopted in the reign of George the Second, a virtual authority was given to all the subjects of Great Britain to defraud the revenue laws of other countries even by the commission of perjury, and that this principle has received the sanction of the highest English judicial courts. In the case of the United States against Wood, at New York, large extracts from the report of which were yesterday read to this committee, the practical result of these principles was fully disclosed in the conduct of that individual. The same result has been yet more recently exhibited in a case of two other individuals, decided only the last week in the District Court of the United States at Philadelphia. The same demonstration has also recently been made in the case of another trial at Boston.

The whole system of fraud and perjury was laid bare to the bone in the trial of Wood, at New York. When detected, by the transmission of his own correspondence from England, his apology was, that he had done nothing but what had been equally done by others. *That it was the ordinary course of trade.* And this was but the natural consequence of that license to fraud upon the revenues of foreign countries enacted by the Parliament and sanctioned by the judges of that nation. This license is equivalent to a dispensation from the future responsibility for false swearing at the bar of Heaven. Now, it is a well-know principle of the common law, that a man who avows his own disbelief of this responsibility, who denies the existence of a God, or his own liability to account in a future world for any falsehood of his oath before a court of justice on earth, thereby becomes incompetent to testify in the courts of law. And, I contend that men who have been thus released by their government from all this responsibility, for the purpose of encouraging them to smuggling trade in a foreign country where they reside, are *quoad hoc* justly liable to the same exclu-

sion. They do not hold themselves bound by the obligations of conscience when taking these oaths. To that extent they are precisely in the predicament of the man who denies the existence of a God and the retributive justice of a future world. And it is the more important that their testimony should be excluded, because, if admitted as witnesses for one another, it can scarcely be expected that verdicts should ever be obtained against them. Wood had been regularly swearing to his false entries for a series of years, until the accidental transmission of his father's papers from England brought his flagitious deeds to light. During all that time he would have been a competent witness in favor of Taylor & Blackburn, whose case was recently tried at Philadelphia, and they would have been equally competent witnesses for him. It is, therefore, indispensably necessary to restrict the principle of competency as now applied to interested witnesses, and to restore the more consistent and more rational practice of the common law, as it stood before the English decision of the Court of King's Bench in the case of Bent against Baker.

There is, indeed, another principle nearly akin to this in which the courts of the United States have not uniformly adopted the practice prevailing in England. The English judges, for example, admit the testimony of a witness who is not interested in the event of the suit, even though he believes himself to be so. But I find here, in the American edition of Starkie, page 747, a note stating that, in Virginia, Kentucky, New York, and Massachusetts, it seems that a witness who believes himself interested in the event of the suit is incompetent, although not legally interested; but that it is otherwise in Vermont and Pennsylvania.

With regard to the opposition of my friends, the Representatives from the city of New York, against this bill, and especially against this section of the bill, I cannot but observe that they appear to be volunteers in the cause. None of them allege that they have received from their constituents any complaint, much less any instructions against the bill; and one of them (Mr. Monroe) expressly declares that he has not heard one word from any one of his constituents either for or against the bill. Yet he has been in constant correspondence with many of them while here, and has recently returned from a visit to them of several days, during which he was in daily personal communication with them.

Mr. Chairman, does not this fact speak more than volumes of testimony, to prove that the honest American merchants in New York are either entirely indifferent to this bill, or that they believe, as I believe, that its operation will be altogether favorable to their interest. Yes, Sir, the absence of any remonstrance from them is among the strongest proofs of their approbation of the bill. As we are told by a Roman historian that, at the funeral of Junia, the widow of Cassius, and sister of Brutus, in the reign of Tiberius, sixty-three years after the battle of Philippi, the Roman people little heeded the long procession of the images of the illustrious personages of the family for long ages past, which, according to the custom of the times, were carried in solemn array before the corpse, but fixed their thoughts entirely upon the statues of Brutus and Cassius, precisely because they were not there.

Sir, this bill has been more than two months before this House. Do you think that if the real American merchants in New York had seen in it any thing subversive of their rights or hostile to their interests, their voices would not have been heard remonstrating against it in this Hall? Their silence cannot be attributed to ignorance of the existence of the bill: for it was immediately published in several of the daily journals of that city, with bitter commentaries and inflammatory appeals to their passions; one of which publications was yesterday read by the gentleman from Indiana, (Mr. J. W. Davis,) and all of which, I have no doubt, originated in the same store-house of the Yorkshire clothiers. Are the

merchants of New York drivellers or fools? Are they so careless of the public interest or of their own, as to look for two months together upon a measure openly pending before this House, so injurious to them as this has been represented, without uttering so much as a whisper against it even to their own representatives? Sir, it is not, it cannot be.

Sir, when I have found myself this day compelled to defend this section of the bill against three of my dearest friends—men whose talents I admire, whose unsullied integrity I regard with reverence, and to whose learning as lawyers I am bound to pay the most respectful deference—I feel myself so unequal to the contest that, if I had reason to believe that the merchants of New York, whose interests are as dear to me as if they were my own immediate constituents, were really and honestly opposed to this bill, I should be almost ready, much as I believe it necessary both to the support of the manufacturers and to the revenue of the country, to abandon it. But, Sir, the bill is as necessary to the interest of the true American merchant as to the revenue and to the manufacturers.

The memorials upon which this bill is founded, declare that seven eighths of the native importing merchants have been driven out of the market by the competition of these Yorkshire smugglers. The Representatives of the city of New York are volunteers, then, in their opposition to this bill. They all admit that the frauds upon the custom-house at that city have been and are enormous; that they cry aloud for a remedy; and when they see that, in the administration of this remedy, some additional power must be invested in the collector of that port, is it not possible that, without imputing to them any other than a very natural impulse, they may have been led to view with some disfavor an increase of influence and power in the hands of an officer not to them a political favorite?

When the question was taken in the Committee of the Whole on Mr. Rhett's motion to strike out the ninth section of the bill, it appeared that there was not a quorum voting; thereupon the committee rose, and the House adjourned over until Monday. On that day the bill was again taken up in committee, and the section was retained by a vote of 83 to 62. A motion was then made by Mr. Rhett to strike out from the tenth section of the bill the clause which declares any person, being an officer of the customs, accessory to the offence of defrauding the revenue, incapable of holding any office of profit or trust under the United States; on the ground that it was unconstitutional, inasmuch as it would add to the disqualifications which the Constitution alone could provide.

Mr. Adams replied to this objection, that the very purpose of introducing this penalty into the bill was to carry into effect the disqualifications provided by the Constitution itself. This provision, he said, applied only to persons holding offices of trust in the service of the United States, who, when guilty of participation in the crime of defrauding the revenue, committed a complicated offence, adding treachery to their trust to that of combining with others to defraud the government, which had reposed its confidence in them. For this aggravation, the Constitution itself had thus provided:

"Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law."—*Constitution of United States, art.* 1, *sec.* 3.

This, then, is the precise case provided for by the Constitution. To defraud the revenue is a crime in every individual. But in a public officer appointed to carry the laws into execution, it is a double crime. The offender is, by the Constitution, made subject to the same penalties as other individuals. But, as a public officer, he is further liable to the forfeiture of

his place, and to disqualification for holding any public trust ever after. But the Constitution has not specified the particular offences for which this penalty shall be inflicted. This it is the province of Congress to prescribe, and surely no offence can be visited more justly with this severity, than the violation of that very duty with which the offender has been specially charged.

Mr. RHETT's motion to strike out this provision was rejected by a vote of 48 to 82, and the bill was reported to the House with sundry amendments adopted by the committee.

On Tuesday, the 12th of May, after a long and able speech of Mr. HOLMES, of South Carolina, against the bill, the previous question was moved and seconded. A separate question was taken, by yeas and nays, upon the motion to strike out the ninth section, the vote whereupon was as follows:

YEAS—Messrs. Andrews, Baker, Barnard, Biddle, Bond, A. V. Brown, Sampson H. Butler, Bynum, J. Campbell, Clark, Colquitt, Connor, Crabb, Cranston, Curtis, Edward Davies, Dawson, Dillett, Fillmore, Fine, Fornance, Galbraith, Rice Garland, Goggin, Green, Griffin, Grinnell, Hand, Hill of Virginia, Hill of North Carolina, Hoffman, Holmes, Hunt, Charles Johnston, Leadbetter, Leet, Lincoln, Lowell, Lucas, Marchand, Monroe, Morgan, Palen, Peck, Pope, Proffit, Randall, Randolph, Reed, Rhett, Ridgway, E. Rogers, Saltonstall, Sergeant, Shepard, Albert Smith, Truman Smith, Thomas Smith, Stanly, Storrs, Stuart, Sweeny, Taliaferro, Waddy Thompson, Tillinghast, Toland, Underwood, P. J. Wagner, Warren, J. White, Wise—72.

NAYS—Messrs. Adams, Judson Allen, Hugh J. Anderson, Atherton, Beatty, Briggs, Albert G. Brown, Burke, Calhoun, Carr, Carter, Casey, Chapman, Coles, Jas. Cooper, Wm. R. Cooper, Cushing, Dana, John Davis, Dennis, Duncan, Earl, Eastman, Edwards, Ely, Evans, Floyd, Gates, Gentry, Gerry, Graves, Hammond, J. Hastings, Hawes, Hawkins, Hook, Hubbard, James, W. C. Johnson, Cave Johnson, N. Jones, McKay, Keim, Kemble, Kille, Leonard, McCarty, McClellan, McCulloh, Mallory, Medill, Mitchell, Montgomery, Naylor, Newhard, Ogle, Parish, Parmenter, Parris, Petrikin, Prentiss, Ramsey, Rariden, Robinson, Shaw, Simonton, Slade, Steenrod, Swearingen, Triplett, Trumbull, Turney, Vanderpoel, D. D. Wagener, Watterson, Weller, Edward D. White, Wick, J. W. Williams, Thomas W. Willams, Henry Williams, Lewis Williams, Jos. L. Williams, Worthington—85.

So the motion to strike out was negatived.

The question was then put: "Shall the bill be engrossed and read a third time?" and passed in the affirmative: Yeas 122, nays 32.

YEAS—Messrs. Adams, Judson Allen, H. J. Anderson, Andrews, Atherton, Baker, Beatty, Beirne, Biddle, Blackwell, Briggs, A. V. Brown, Burke, Bynum, Calhoun, Carr, Casey, Clark, Coles, Connor, James Cooper, William R. Cooper, Corwin, Cranston, Cushing, Dana, Davee, Edward Davies, John Davis, Deberry, Dennis, Dillett, Duncan, Earl, Eastman, Edwards, Ely, Evans, Fine, Floyd, Galbraith, Gates, Goode, Graham, Green, John Hastings, Hawes, Hawkins, Hill of Virginia, Hill of North Carolina, Hook, Howard, James, Cave Johnson, Nathaniel Jones, Keim, Kemble, Kille, Leet, Leonard, Lincoln, Lowell, Lucas, McClellan, McKay, Mallory, Marchand, Medill, Miller, Mitchell, Montanya, Montgomery, Calvary Morris, Naylor, Newhard, Ogle, Parmenter, Petrikin, Pope, Prentiss, Ramsey, Randall, Randolph, Rariden, Reed, Reynolds, Ridgway, Robinson, Ryall, Saltonstall, Sergeant, Shaw, Simonton, Slade, Albert Smith, Truman Smith, Thomas Smith, Steenrod, Storrs, Strong, Stuart, Swearingen, Sweeny, Tillinghast, Toland, Triplett, Trumbull, Turney, Underwood, Vanderpoel, David D. Wagener, Watterson, Weller, Edward D. White, John White, Wick, Jared W. Williams, Henry Williams, Thomas W. Williams, Lewis Williams, Joseph L. Williams, Worthington.

NAYS—Messrs. Barnard, Boyd, Chapman, Chittenden, Colquitt, Crabb, Curtis, Dawson, Fillmore, Rice Garland, Goggin, Graves, Griffith, Grinnell, Habersham, Hoffman, Holmes, Hubbard, Hunt, Lewis, Monroe, Morgan, Parish, Proffit, E. Rogers, Shepard, Stanley, Sumter, Taliaferro, Waddy Thompson, Warren, Wise.

The bill was then read a third time and sent to the Senate.

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